

1 SENATE BILL NO. 488

2 INTRODUCED BY J. WINDY BOY

3 BY REQUEST OF THE SENATE STATE ADMINISTRATION STANDING COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STATE AGENCIES TO COOPERATE WITH AND
6 RECOGNIZE THE AUTHORITY OF MONTANA TRIBAL GOVERNMENTS IN THE PROTECTION,
7 PRESERVATION, AND MANAGEMENT OF TRIBAL CULTURAL RESOURCES; PROVIDING A PENALTY; AND
8 AMENDING SECTION 20-25-108, MCA."

9
10 WHEREAS, Article I of the Montana Constitution recognizes "the agreement and declaration that all lands
11 owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the
12 congress of the United States" until jointly revoked by the United States and the people of Montana and Article
13 X, section 1(2), of the Montana Constitution "recognizes the distinct and unique cultural heritage of the American
14 Indians" and commits through educational goals to the preservation of the cultural integrity of the American
15 Indians; and

16 WHEREAS, statutes regarding jurisdiction on Indian lands recognize in section 2-1-305, MCA, the rights
17 of the Indian tribe or community to carry on "its age-old tribal dances, feasting, or customary Indian celebrations"
18 and specifically protect Indian culture; and

19 WHEREAS, the legislative intent provided in section 20-1-501, MCA, for statutes implementing Indian
20 Education for All encourages all Montana citizens to learn about "the distinct and unique cultural heritage of
21 American Indians" and further directs every educational agency and all educational personnel to "work
22 cooperatively with Montana tribes" and to "include information specific to the cultural heritage and contemporary
23 contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments";
24 and

25 WHEREAS, the Human Skeletal Remains and Burial Site Protection Act in Title 22, chapter 3, part 8,
26 MCA, and the Montana Repatriation Act in Title 22, chapter 3, part 9, MCA, recognize the importance of treating
27 human skeletal remains, burial sites, and burial material with respect, including respect for the legal, moral, and
28 religious rights and obligations of tribal groups; and

29 WHEREAS, the state has established a State-Tribal Economic Development Commission in Title 90,
30 chapter 1, MCA, and set forth goals of promoting, encouraging, developing, and advancing economic prosperity

1 and employment on Indian reservations in Montana, including through the coordination of and application for
 2 federal, state, and private sector grants; and

3 WHEREAS, the state has created and staffed the Office of State Coordinator of Indian Affairs,
 4 recognizing that "unique differences exist between the tribes, their reservations, customs, and treaties and their
 5 respective relationships with the federal government" as well as the importance of serving off-reservation
 6 "enrolled and unenrolled Indians" who together with Indians living on the reservations have "the rights, duties,
 7 and privileges of full citizenship that Indians are entitled to as citizens of this state"; and

8 WHEREAS, each agency of state government has a duty to respect the right of each tribal government
 9 within the state of Montana to retain, preserve, protect, and control its own Indian tribal cultural property.

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 NEW SECTION. **Section 1. Tribal cultural recognition -- legislative intent.** It is the intent of the
 14 legislature that each state agency recognize the importance of protecting Indian culture and the unique nature
 15 of the government-to-government relationship created by federal treaties with the tribes as well as the Montana
 16 citizenship of enrolled and unenrolled Indians living both on and off reservations in Montana. In recognizing the
 17 culture and cultural property of Indian tribes in Montana, state agencies that work with tribal governments have
 18 certain obligations to recognize cultural property rights, as described in [section 3].

19

20 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 3], the following definitions
 21 apply:

22 (1) "Cultural property" means all aspects of traditional knowledge, sacred property, images, sounds,
 23 crafts, art symbols, petroglyphs, pictographs, and biological and genetic material.

24 (2) "Cultural property right" means that a society, especially that of indigenous peoples, has the right to
 25 control and protect the ways that the information they provide to a state agency is accessed and used, including
 26 whether the use requires a traditional heritage explanation.

27 (3) "Cultural protocol" means specific procedures and practices for acquiring knowledge, information,
 28 and data. A cultural protocol may be required by a tribal government before and while obtaining any cultural
 29 artifacts, history, or information that is considered sensitive or protected by a tribe or subgroup of indigenous
 30 people.

1 (4) "Culture" means a system of values, thoughts, communication, customs, beliefs, and attitudes that
 2 are shared, learned, and symbolic and that shape and influence the perceptions and behavior of a racial, ethnic,
 3 religious, or social group.

4 (5) "State agency" has the definition provided in 2-2-102.

5 (6) "Tribal cultural property" means cultural property that is held in common by a group of indigenous
 6 people and that is maintained by a community rather than an individual.

7
 8 **NEW SECTION. Section 3. Cultural protocols required -- penalty.** (1) A state agency or employee
 9 of a state agency engaged in research, applying for grants, implementing grants or contracts involving data
 10 collection or information gathering, handling data management, conducting oral or visual ethnographies, or
 11 engaging in documentary cinematography shall follow a cultural protocol prescribed by the relevant entity
 12 described in subsection (2) for the tribal cultural property, culture, or Indian subjects of ASSOCIATED WITH OR
 13 CLAIMED BY THE RELEVANT ENTITY REGARDING material being gathered as described in this subsection.

14 (2) The cultural protocol required by subsection (1) may be available from a research review board,
 15 institutional review board, human subjects review board, cultural commission, cultural advisory board, or tribal
 16 government, depending on the specific tribal government or tribal designation through a tribal resolution process.

17 (3) In following the proper procedures to ensure that tribal governments and the appropriate designated
 18 entity are informed of the activities described in subsection (1), a state agency or employee of a state agency
 19 shall follow the guiding principles provided in 2-15-142 in cooperating with the entity that designates the cultural
 20 protocol.

21 (4) In working with the tribal government or entity designating the cultural protocol, a state agency or
 22 employee of a state agency shall recognize that, except as provided in subsection (5), the tribal government or
 23 entity designating the cultural protocol has a cultural property right to control the use of data and material
 24 generated regarding culture and tribal cultural property from research, creative activities, grant applications, and
 25 contracts, whether with state or private sector entities, and the reports generated on grant-funded projects.

26 (5) This section does not apply to data or materials collected:

27 (a) before [the effective date of this act] by a state agency, except that a state agency or employee of
 28 a state agency shall cooperate with requests to share this previously collected data and material with the tribal
 29 government or entity designating the cultural protocol;

30 (b) by the federal government and used by a state agency; or

1 (c) by a state agency that has a state-tribal cooperative agreement with a tribal government under Title
2 18, chapter 11.

3 (6) A state agency or employee of a state agency that has followed the cultural protocol and gathered
4 data or materials under the authority of the tribal government or entity designating the cultural protocol is not liable
5 for a breach of this section.

6 (7) A violation of this section is subject to a private right of action for a civil penalty brought by a tribal
7 government in a court of competent jurisdiction. The penalty for a first offense is \$500 and \$1,000 for a second
8 or subsequent offense. Penalties collected under this section must be deposited in the state special revenue
9 account provided for in 90-1-135.

10

11 **Section 4.** Section 20-25-108, MCA, is amended to read:

12 **"20-25-108. Research programs -- powers of units.** (1) The units of the system are authorized, singly
13 or in cooperation, to engage in research and development programs with the prior approval of the regents.

14 (2) ~~Such~~ The authorized programs may be conducted by any department of a unit or any organization
15 established to assist the unit. A unit or organization may:

16 (a) contract with private organizations, companies, firms, or individuals relative to research programs;

17 (b) conduct research programs with the penal, corrective, or custodial institutions of Montana and
18 engage the voluntary participation of the inmates with the prior approval of the governing board of the institution;

19 (c) accept contributions, grants, or gifts from private organizations, companies, firms, individuals,
20 governmental agencies or departments, or tribal governments or tribal agencies through their respective tribal
21 resolution processes for research programs;

22 (d) make agreements or cooperative undertakings with private organizations, companies, firms,
23 individuals, governmental agencies or departments, or tribal governments or tribal agencies through their
24 respective tribal resolution processes for research programs;

25 (e) match the funds of private organizations, companies, firms, individuals, governmental agencies or
26 departments, or tribal governments or tribal agencies through their respective tribal resolution processes with
27 available funds for research programs;

28 (f) accumulate, invest, and expend the funds and proceeds from research programs;

29 (g) acquire real and personal property reasonably required for research programs;

30 (h) not divert funds, proceeds, or real and personal property from the research programs; and

1 (i) not charge or obligate the state of Montana or the general funds or a unit or agency; and
2 (j) contract with tribal governments, specifically through their tribal resolution processes, research review
3 guidelines, and cultural protocols.

4 (3) The legislature declares a public need for scientific research in the units of the system to promote
5 the general welfare and to provide an adequate defense for the United States."
6

7 NEW SECTION. Section 5. Notification to tribal governments. The secretary of state shall send a
8 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
9 Chippewa tribe.
10

11 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified
12 as an integral part of Title 2, chapter 1, part 3, and the provisions of Title 2, chapter 1, part 3, apply to [sections
13 1 through 3].
14

- END -